CF0000058304

(2)

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

APPEAL OF PRISONER

Division Bench (Criminal)

No. 27.67/48 Name ...

Father's name ...

Residence ... Age ...

Sentenced to ... On ...

Under section ... by ...

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ... 13.9.95

2 Date on which copy received ... 20.9.95

3 Date on which Appeal sent ... 21.9.95

4 Whether the prisoner wishes to be represented or ~~not~~ – Yes / No

No. 27.67/48 Name ...

Confined in ... Jail ...

7/1 (Cell) Dated ... 1995 22.9.95

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ ... togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent
Central Jail, Jaipur. (Raj.)

Date of receipt in ... office ...

Date of receipt record to accompany the ... in time

Memo of Appeal to the Appellate court ...

No ... Dated ... 199...

Forwarded to the ...

High Court of Madhya Pradesh JABALPUR
Reg. No. 875
Receipt Clerk
High Court, Jabalpur

Date of receipt in Appellate Court ...

(P. T. O.)

(17)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR (C.G.)

DIVISION BENCH*: HON'BLE SHRI K.H.N. KURANGA, CJ
& HON'BLE SHRI L.C. BHADOO, J

Criminal Appeal No.1344 of 1995

Seetaram
Aged about 25 years,
Son of Bishon Ghasiya,
Resident of Kodawa, Police Station Kusumi,
District: Surguja

Versus

State of Chhattisgarh

And

Criminal Appeal No.1345 of 1995

Jeetu
Son of Bifaya,
Aged about 25 years,
Resident of Kodwa,
Podlice Station Kusmi,
District: Surguja

Versus

State of Chhattisgarh

Present: Mr. Abhay Tiwari, Advocate for the appellants.
Mr. J.D. Bajpai, Govt. Advocate, for the State/respondent.

J U D G M E N T
(Delivered on 5th of April 2004)

The following Judgment of the Court was delivered by

L.C. Bhadoo, J. -

Accused/appellants Seetaram and Jeetu have preferred the above criminal appeals under Section 374 (2) of the Code of Criminal Procedure, 1973 being aggrieved by the judgment of conviction and sentence dated 13/09/1995, passed by the learned Sessions Judge, Surguja in Sessions Trial No.336 of 1994 whereby the learned Sessions Judge after holding the accused/appellants guilty of the offences punishable under Sections 363,

(16)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH: HON'BLE SHRI K.H.N. KURANGA, CJ
& HON'BLE SHRI L.C. BHADOO, J

Criminal Appeal No.1344 of 1995

And

Criminal Appeal No.1345 of 1995

JUDGMENT FOR CONSIDERATION

Sd/-
L.C. Bhadoo
Judge

HON'BLE THE CHIEF JUSTICE

I agree.

Sd/-
Chief Justice

Post for pronouncement of Judgment: 5th April 2004

Sd/-
L.C.BHADOO
Judge

366 and 376(2)(g) of the Indian Penal Code convicted and sentenced each of them to undergo rigorous imprisonment for three years, seven years and imprisonment for life, respectively. The sentences were ordered to run concurrently.

(2) Since these appeals arise out of common judgment and relate to one incident, they are being disposed of by this common Judgment.

(3) Factual scenario giving rise to these appeals is as follows : On 05/07/1994 Asan Ram, father of the prosecutrix, took prosecutrix Droupadi to village Kodwa for her treatment as she was sick. In the evening at about 6.00 Asan Ram and Droupadi were returning and when they reached near village Bada the accused/appellants came out from the nearby forest and they demanded tobacco from Asan Ram. Asan Ram replied that he has no tobacco. The accused/appellants caught hold of the prosecutrix and when Asan Ram tried to resist and intervene, the accused/appellants took out a dagger. Being frightened Asan Ram ran away from the place. The accused/appellants took the prosecutrix inside the forest and committed rape on her one by one inspite of the objection raised by her. Thereafter the accused/appellants took the prosecutrix to village Kodwa. The prosecutrix on the pretext of attending call of nature escaped and went to the house of Hulas Ghasiya and narrated the incident to Pusnath, Sarpanch of the village. Asan Ram along with some persons and Police Head Constable started searching the prosecutrix. Second day morning they went to village Bada where the prosecutrix met Asan Ram. She narrated the incident to Asan Ram and Head Constable Heera Sai. On the information of the prosecutrix Dehati Nalishi (Ex.P/1) was recorded and the investigation was taken up. The investigating officer seized the underwear and the shawl of the prosecutrix vide Ex.P/2. One bronze locket and a dagger were also seized from the possession of accused Seetaram under Ex.P/5. The prosecutrix was sent to the Primary Health Centre, Shankargarh for her medical examination. The doctor after examining the prosecutrix prepared the report Ex.P/6-A. The underwear of the prosecutrix in which bloodstains were present was also shown to the doctor for his opinion. The doctor after examination prepared his report Ex.P/7-A. The accused persons were also got examined by the doctor regarding their

capability to commit sexual intercourse and the doctor after examining them prepared the reports Ex.P/9-A, Ex.P/10-A, Ex.P/13-A & Ex.P/14-A.

(4) The Police after completing the investigation filed the charge-sheet against the accused/appellants in the Court of Judicial Magistrate First Class, Ambikapur who in turn committed the case to the Sessions Judge, for trial.

(5) The learned Sessions Judge after hearing the arguments of the Public Prosecutor and the counsel for the accused/appellants and perusing the records was of the opinion that there was sufficient material to frame charges under Sections 363, 366 and 376 (2)(g) of the Indian Penal Code against the accused/appellants. Accordingly he framed the charges against the accused/appellants for the commission of the aforesaid offences. The charges were read over and explained to the accused/appellants. The accused/appellant denied the charges and claimed to be tried. The statements of the accused persons were recorded in which they simply denied their involvement in the crime and stated that they have been falsely implicated in the case.

(6) After hearing the public prosecutor and the counsel for the accused persons, and after believing the evidence of the prosecution, the learned Sessions Judge convicted and sentenced the accused persons as indicated in the beginning of this judgment.

(7) We have heard Shri Abhay Tiwari counsel for the accused/appellants and Shri J.D. Bajpai, Govt. Advocate, for the State/respondent.

(8) Learned counsel appearing for the accused/appellant has not challenged the convictions of the accused/appellants. However, he submitted that both the accused/appellants are young. Therefore, the sentence of life imprisonment imposed on them is too harsh and they may be let off by sentencing them to imprisonment for the period already undergone by them.

(9) As far as the question of age of the prosecutrix on the date of the incident namely 05/07/1994 is concerned, the prosecutrix has stated

that she was studying in Class-VII. His father PW-2 Asan Ram has stated that on the date of the incident the prosecutrix was 13 years of age. PW-6 Steephan Bakla, Head Master of Middle School, Belsar has stated that the prosecutrix was studying in Class-VII and according to the school records her date of birth was 02/05/1979. The certificate showing the date of birth of the prosecutrix is Ex.P/3. In view of the above material on record, it is established that on the date of the incident namely 05/07/1994 the age of the prosecutrix was 15 years. Therefore, she was below 16 years of age and as such she could not have given her consent.

(10) As far as the question of committing the offence by the accused/appellants is concerned, prosecutrix Droupadi (PW-1) has stated that as she was sick, her father took her to village Kodwa for treatment. In the evening at about 6.00 they were returning and when they reached near the school in village Bada two accused persons stopped them and they asked for tobacco from her father. When his father said that he had no tobacco with him, the accused persons caught hold of her father and asked for money. One accused caught hold of her right hand and the other accused took out a dagger in order to assault her father. Seeing this, her father ran away from that place. Thereafter the accused persons took her inside the forest. She started weeping. But the accused persons did not leave her. Thereafter the accused persons disrobed her, removed her underwear, felled her on the ground and both of them committed rape on her one by one. Names of the accused persons are Jeetu and Seetaram. Jeetu committed rape first and when she tried to resist he pressed her neck and thereafter Seetaram also committed rape on her. Blood started coming out from her private part and she was feeling pain. Thereafter the accused persons took her to village Kodwa. On the pretext of attending the call of nature she escaped from there, reached the house of the Sarpanch and narrated the incident. Next day morning her father came along with the Police and she disclosed the incident to the Police and gave a report Ex.P/1. The Police seized the shawl and her underwear under Ex.P/2. She was medically examined. The above evidence of the prosecutrix has been corroborated by his father PW-2 Asan Ram. The defence counsel was not able to elicit anything in their cross examination which makes the evidence of PW-1 and PW-2 unbelievable. The evidence of PW-1 stands corroborated by the medical evidence and the evidence of PW-2. PW-4 Dr.

Smt. J. Kujur has stated that she examined the prosecutrix. 14 teeth were present in the upper jaw as well as in the lower jaw. Secondary sexual character was not developed. There were six injuries on the body of the prosecutrix. All the injuries were abrasions on hand, neck and thigh. The doctor has further stated that all these injuries could be caused due to friction. The injuries were simple in nature. This witness has further stated that on internal examination she noticed that the private parts were not fully developed and the blood was coming out of the vagina. According to the doctor, hymen was ruptured at 8 O'clock position and the margins were congested. The doctor was of the opinion that she was recently subjected to sexual intercourse. The report is Ex.P/6-A. PW-7 Dr. F.R. Nirala has stated that on 22/07/1994 he examined accused Jeetu and Seetaram and found that they were capable of performing sexual intercourse. He also examined the underwear in which dark stains were present. The above medical evidence corroborates the evidence of the prosecutrix. The injuries were found on her body, hymen was ruptured and blood was coming out of the vagina which prove the fact of commission of rape on her by the accused persons.

(11) In view of the above discussion, we are of the opinion that the accused persons kidnapped the prosecutrix from her lawful guardianship to force her to have sexual intercourse with them and ultimately she was ravished by the accused persons one by one. Therefore, the finding of the learned trial Court that the accused persons have committed the offences under Sections 363 366 and 376(2)(g) of the Indian Penal Code is correct which does not require interference by this Court as the same is based on proper appreciation of the evidence on record.

(12) Now coming to the question of sentences imposed on the accused/appellant, they have been sentenced to undergo rigorous imprisonment for three years, seven years and imprisonment for life, respectively for the commission of the above said offences. At the time of the commission of the offences the accused persons were 25 years of age and they are in jail since 07/07/1994. Having regard to the facts and circumstances of the case, we are of the opinion that ends of justice would be met if sentence of life imprisonment imposed on the accused/appellants

is reduced to imprisonment for ten years for the commission of the offence under Section 376(2)(g) of the Indian penal Code.

(13) In the result, the appeals of the accused/appellants partly succeed and they are partly allowed. Their convictions for the commission of the offences under Sections 363, 366 and 376(2)(g) of the Indian penal Code are confirmed. The sentences imposed on them for the commission of the offences under Sections 363 and 366 of the Indian Penal Code are also confirmed. The sentence imposed on them for the commission of the offence under Section 376(2)(g) of the Indian Penal Code is modified and it is reduced to rigorous imprisonment for ten years.

(14) With this modification in the sentence imposed by the learned Sessions Judge, Surguja in Sessions Trial No.336 of 1994 on the appellants for the offence under Section 376(2)(g) of the Indian Penal Code, the appeals stand disposed of.

Sd/-
Chief Justice

Sd/-
L.C.BHADOO
Judge

Brajesh*